

Internal Revenue Service

District
Director -

Delaware-Maryland District

Department of the Treasury

31 Hopkins Plaza, Baltimore, MD 21201

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

IN REPLY TO:

DATE: SEP 30 1997

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You incorporated in [REDACTED] on [REDACTED] to be organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding section of any future federal tax code.

The activity of the organization will be to operate a "chain" of thrift stores. During the initial stages of the corporation's retail facility, the principal officers and directors will be the only employees. If operations prove successful, the corporation plans to hire employees as needed. The employees will only serve to operate the day to day operations of the retail business, and will not be authorized to make decisions regarding the distribution of funds earned through the corporation's sales.

After paying the salaries of the employees and the other expenses associated with the retail sales of the donated items, including, retaining income to open additional stores, the corporation plans to distribute remaining funds to organizations and individuals in need of financial aid.

Income will be derived from sales and will be expended for salaries, rent, operations, reserve fund for additional stores and contributions.

The organization is controlled by [REDACTED] and [REDACTED] Vice President/Secretary and President/Treasurer, respectively.

Section 501(c)(3) of the Code provides for exemption from Federal income tax for organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(3)-1(c)(1) of the Regulations states that an organization is operated exclusively for the purposes set out in section 501(c)(3) of the Code only if substantially all of its activities are in furtherance of these purposes.

Revenue Procedure 90-27, published in Cumulative Bulletin 1990-1, on page 514, provides, in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. "A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or a determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

While you proposed to be organized on a nonprofit basis, nonprofit is not the same as exempt. The fact that you do make a profit is not the controlling factor. See *United States v. La Societe Francaise de Bien, Mut.*, 152 F. 2d 243 (9th Cir. 1945), cert. denied 327 U.S. 793 (1946); *Hassett v. Associated Hospital Service Corporation*, 125 F. 2d 611 (1st Cir. 1942), cert. denied 316 U.S. 672 (1942); *Baltimore Health and Welfare Fund v. Commissioner*, 68 T.C. 554 (1978); and *B.S.W. Group, Inc. v. Commissioner* 352 (1978).

In *Randall Foundation v. Riddell* _F. 2d 803, (8th Cir. 1957), an organization was established to operate as a nonprofit charitable foundation. Income to the organization came primarily from the sales of shares of stock donated by the foundation creator. The court held that this organization was primarily engaged in operating a commercial investment business also stated that: "a corporation which in its inception engages in trade, business or speculation and has a vague charitable design, does not come within the terms of the statute".

Based upon the facts submitted we have determined that you have not demonstrated to the satisfaction of the Service that your proposed activities will be conducted within the intendment of 501(c)(3) of the Code.

While operating a thrift store can be a charitable purpose, the method of operations determines whether or not it differs from a regular trade or business and falls within the purview of section 501(c)(3).

You have not demonstrated a difference between your activities and those of an entity that operates as a commercial business. The fact that the governing body is related and controls the organization, in addition to, being the only employees and determining your own salaries is evidence of a private rather than public purpose being served.

You stated that the difference between your organization and a commercial business enterprise is that all profits, over and above, expenses will be given away. However, one of your primary expense is a reserve fund to open additional stores, thereby, limiting your charitable expenditures. Hence your proposed charitable purpose is secondary to your business venture(s).

At this time, you are unable to provide sufficient information to permit a conclusion that the activities you will carry on will be in furtherance of 501(c)(3) purposes, and that they will be carried out in a manner that will meet the requirements of section 501(c)(3) of the Code.

On the authority of the above Revenue Procedure, it is held that a record of actual operations will be required before a ruling or determination will be issued.

After you have operated for a period of time sufficient to permit a conclusion that your operations will clearly fall within the scope of section 501(c)(3) of the Internal Revenue Code and a reconsideration of your exempt status is desired, a new application for exemption may be filed with this office.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

-4-

[REDACTED]

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,



Paul M. Harrington
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]